

1 THE HONORABLE JAMES L. ROBART
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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

STEPHANIE ROSS,
Plaintiffs,
vs.
THE PRUDENTIAL INSURANCE
COMPANY OF AMERICA; and
DOES 1 to 10, inclusive,
Defendants.

Case No.: 2:17-CV-00312-JLR

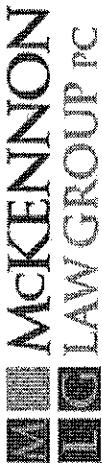
Complaint Filed: February 28, 2017

STIPULATED MOTION TO MODIFY
SCHEDULING ORDER; [REDACTED]
ORDER THEREON

NOTE ON MOTION CALENDAR:
JUNE 8, 2017

STIPULATED MTN. MODIFY SCHED. ORDER
(Case No. 2:17-cv-00312-JLR) - 1

MCKENNON LAW GROUP PC
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1 TO THE HONORABLE JAMES L. ROBART AND HIS COURT CLERK:

2 Pursuant to Local Civil Rule 10(g), Plaintiff Stephanie Ross ("Ross") and
3 Defendant The Prudential Insurance Company of America ("Prudential")
4 (collectively "the Parties"), for good cause, hereby stipulate and jointly move this
5 Court to modify the Minute Order Setting Trial Dates and Related Dates, Docket
6 No. 18 ("Scheduling Order"), as specifically set forth below in Section 2.

7 **1. GOOD CAUSE EXISTS TO MODIFY THE SCHEDULING ORDER**

8 There is good cause to modify the Scheduling Order in this ERISA action,
9 where Ross alleges she is entitled to recover unpaid disability benefits from
10 Prudential, to reflect a more traditional ERISA litigation plan. Since this is an
11 ERISA action, it will be tried to the Court on Prudential's administrative record and
12 trial briefing citing to that record, with no witnesses, trial exhibits or expert
13 testimony. The bench "trial" in an ERISA action is similar to a hearing on a
14 summary judgment motion, though under Rule 52 instead of 56 of the Federal Rules
15 of Civil Procedure. The Parties will argue through their trial briefs, and any oral
16 argument the Court permits, how the administrative record supports their respective
17 positions. Therefore, many of the pretrial requirements set forth in the current
18 Scheduling Order, and the Local Civil Rules incorporated into the Scheduling
19 Order, are unnecessary and a waste of judicial and Party resources. The current
20 Scheduling Order sets forth requirements for a typical jury trial case or bench trial
21 that will include live witness testimony, experts and trial exhibits, none of which
22 will be the case for this ERISA action.

23 The Parties unequivocally agree that the Scheduling Order needs to be
24 modified to reflect a more typical scheduling order in an ERISA case. They filed a
25 Rule 26(f) Joint Status Report and Discovery Plan agreeing that this case should be
26 tried to the Court insofar as ERISA does not provide a right to jury trial. *See* Docket
27

28 STIPULATED MTN. MODIFY SCHED. ORDER
(Case No. 2:17-cv-00312-JLR) - 2

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1 No. 17 at page 4:18. The Parties requested in their Joint Status Report that the Court
2 waive the pretrial requirements of Federal Rule of Civil Procedure 16(e), 26(a)(2),
3 26(a)(3) and the related Local Civil Rules (e.g., pretrial conference, pretrial order,
4 expert disclosures, the submission of witness lists, exhibit lists, etc.) and sought the
5 Court's permission to conduct trial on opening and responsive trial briefs, based
6 upon the information contained in the administrative record and any other evidence
7 the Court decides to admit in its discretion. *Id.* at page 4. Specifically, the Parties
8 agreed in their Joint Status Report that good cause exists for waiver of these pretrial
9 requirements in this ERISA-governed actions as follows:

10 **8. Pretrial Statements:** The parties agree that the pretrial statements,
11 pretrial conference and pretrial order called for by Local Civil Rules
12 16(e), (h), (i), (j), (k) and (l) and 16.1 should be dispensed with.
13 Because this is an ERISA case, and will be tried to the Court, the
14 parties request that the Court waive these pretrial requirements and
15 those of Federal Rule of Civil Procedure 16(e) (pretrial conference),
16 26(a)(2) (expert disclosures) and 26(a)(3) (pre-trial disclosures of
17 witnesses/ exhibits). The parties further seek the Court's permission to
18 conduct trial on cross-briefing, based upon the information contained in
19 the administrative record and any other evidence the Court decides to
20 admit in its discretion. Good cause exists for waiver of the pre-trial
21 requirements as follows:

22 a. Because of the unique nature of ERISA trials, which in many
23 respects resemble a hearing on a motion for summary judgment, the
24 parties believe that the pretrial conference and its associated pleadings
25 would represent an unnecessary use of judicial and litigant resources.

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STIPULATED MTN. MODIFY SCHED. ORDER
(Case No. 2:17-cv-00312-JLR) - 3

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b. ERISA trials are bench trials conducted under Rule 52 of the Federal Rules of Civil Procedure. The parties do not presently anticipate calling live witnesses or experts, which is the norm for an ERISA trial. Additionally, the parties believe that the filings normally required pursuant to Federal Rule of Civil Procedure 16(e), 26(a)(3) and Local Civil Rules 16(e), (h), (i), (j), (k) and (l) and 16.1 (e.g., witness lists, exhibit lists, pretrial statements etc.) are unnecessary because of the limited scope of the trial. The parties anticipate that the evidence that shall be presented at any trial will consist primarily of the administrative record/claim file and damages evidence, subject to any additional evidence the Court decides to admit in its discretion pursuant to a motion to augment the administrative record.

c. The customary pretrial filings are superfluous because the Court “trial” will consist of briefing on the administrative record submitted in advance of trial, as well as any oral argument that may be permitted by the Court.

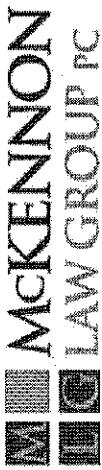
Id. at page 4:16-5:13.

Possibly assuming this action was a jury trial or more typical bench trial with live witnesses, exhibits and expert testimony, rather than an ERISA “trial” which is similar to a summary judgment hearing, the Clerk issued a Scheduling Order, Docket No. 18, setting traditional jury trial requirements. For example, the Scheduling Order set a pretrial conference for July 16, 2018, requires counsel to meet and confer and submit a proposed pretrial order, requires compliance with Local Civil Rule 16 pretrial submissions, and provides for expert disclosures and motions in limine, each of which the Parties agree are unnecessary in this ERISA-governed action. Therefore, good cause exists to modify the Scheduling Order.

1 2. **REQUESTED MODIFICATIONS TO THE SCHEDULING ORDER**

2 Based upon the above, the Parties, by and through their counsel of record
3 whose signatures appear below, hereby stipulate and jointly move the Court for an
4 Order modifying the Scheduling Order to eliminate the pretrial conference, pretrial
5 order and other related pretrial requirements and instead set a briefing schedule for
6 the Parties to file their respective opening and responding trial briefs in accordance
7 with standard procedure in ERISA cases, as follows:

- 8 1. Deadline for the Parties to file their respective opening trial briefs, June
9 25, 2018 (5 weeks before the July 30, 2018 ERISA bench trial);
- 10 2. Deadline for the Parties to file their respective responding trial briefs, July
11 16, 2018 (2 weeks before the trial);
- 12 3. Strike from the Scheduling Order the requirement to file trial briefs on
13 July 23, 2018, found at page 2, line 5, in light of the above alternative
14 briefing schedule;
- 15 4. Deadline for Prudential to file the administrative record with the Court,
16 April 1, 2018 (as agreed in the Joint Status Report, Document No. 17, at
17 page 5, lines 18-19);
- 18 5. Strike from the Scheduling Order the requirement to disclose expert
19 testimony under FRCP 26(a)(2), and the related deadline, found at page 1,
20 lines 18-19 of the Scheduling Order, Document No. 18;
- 21 6. Strike from the Scheduling Order the requirement to file motions in
22 limine, and the related deadline, found at page 1, lines 25-26 and page 2,
23 lines 7-9;
- 24 7. Strike from the Scheduling Order the requirements for a pretrial order and
25 deposition designations, and the related deadlines, found at page 2, lines
26 1-3, page 2, lines 20-21 and page 2, lines 6-7;



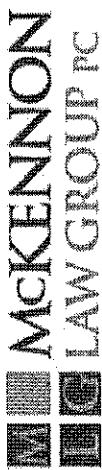
1 8. Vacate the July 16, 2018 pretrial conference and strike from the
2 Scheduling Order the requirement for such conference, including page 2,
3 line 4 of the Scheduling Order;
4 9. Strike from the Scheduling Order the sentence, "All other dates are
5 specified in the Local Civil Rules," found at page 2, lines 10-11, to the
6 extent this phrase was intended to refer to compliance with Local Civil
7 Rules 16(e), (h), (i), (j), (k) and (l) and 16.1 governing pretrial
8 requirements, which, as explained above, are unnecessary in this ERISA
9 action;
10 10. Strike from the Scheduling Order the exhibit requirements, including all
11 text found at page 2, line 22 through page 3, line 2, as this is an ERISA
12 action that will tried on the administrative record and not on trial exhibits,
13 which administrative record will be filed with the Court no later than
14 April 1, 2018;
15 11. The Scheduling Order shall remain the same in all other respects.
16

17 Respectfully submitted and requested this 8th day of June, 2017.

18 Dated: June 8, 2017

19 McKENNON LAW GROUP PC

20 By: /s/ Joseph S. McMillen
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1 Dated: June 8, 2017

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6 Attorneys for Plaintiff Stephanie Ross

7 Dated: June 8, 2017

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14 Dated: June 8, 2017

15 SEYFARTH SHAW LLP

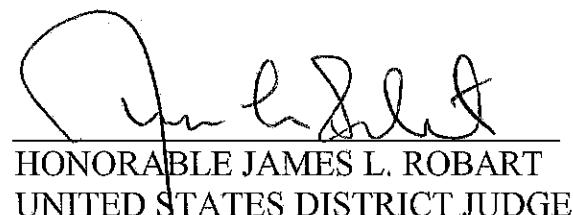
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19 Attorneys for Defendant The Prudential
20 Insurance Company of America

21 **IT IS SO ORDERED.**

22 Dated this 12 day of June, 2017



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HONORABLE JAMES L. ROBART
UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

Pursuant to RCW 9A.72.085, the undersigned certifies under penalty of perjury under the laws of the State of Washington, that on the 8th day of June, 2017, the document attached hereto was presented to the Clerk of the Court for filing and uploading to the CM/ECF system. In accordance with their ECF registration agreement and the Court's rules, the Clerk of the Court will send e-mail notification of such filing to the following persons:

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Executed on the 8th day of June 2017, at Newport Beach, California.

Debi Cartee